



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

child to regard him as born, two American courts have not included him,¹² and a recent English case has reached this result.¹³ The House of Lords declared that the cases recognizing a fixed rule of construction, when the words of the will were "living" at the particular time, form a class by themselves — a ruling which by implication seems to require that in other cases the words of the will be construed in their literal sense. More recently the Court of Appeal has decided that the words "born previously to the date of this my will" include a child *en ventre sa mère* at the date of the will, it being for the child's benefit, and states that the rule of construction is fixed in all cases for the child's benefit, not only when the will describes a person "living," but when it describes a person "born." *In re Salaman*, [1908] 1 Ch. 4. In view of the fact that an anomaly has been admitted to the law on this subject — for every child *en ventre sa mère* cannot be regarded as living, and nothing now turns on the length of time since conception¹⁴ — it seems that it is an undue refinement to give the words "living" and "born" a different meaning.

Obviously it is more convenient from a purely legal point of view that there should be a fixed rule in all cases. A tendency in this direction is manifested (1) by the uniformity with which the general words in statutes of descent are held to include a child *en ventre sa mère*,¹⁵ (2) by the now solidified rule that such children are regarded as born, irrespective of the question of benefit, in the case of the Rule against Perpetuities,¹⁶ (3) by the occasional cases where they are considered as born when neither to their benefit or detriment. In view of this tendency, of the rareness of the cases in which it is not for the child's benefit to hold him born, and of the inaccuracy attendant on attributing to a testator intentions in regard to circumstances obviously unforeseen in the will, it would seem, on the whole, better to consider a child *en ventre sa mère* as born in every case of a devise or a bequest to persons to be determined on some particular event.

THE TERRITORIAL EXTENT AND SITUS OF TRADE-MARKS. — Relief from infringement of trade-marks or trade-names is usually given upon one of three principles: judicial recognition that the user has become invested with a property right in the mark or name;¹ the presence of features of unfair competition;² or deception of the public as to the origin of the goods.³ The courts recognize a property right in such marks only as are mere arbitrary symbols or in such names as are fanciful and in no way descriptive of the article. If the mark or name is descriptive, unfair competition must be shown. The reason for this distinction lies in the fact that if the originator of the symbol or fanciful name has invented and applied to

¹² *Armistead v. Dangerfield*, 3 Munf. (Va.) 20; *M'Knight v. Read*, 1 Whart. (Pa.)

213.

¹³ *Villar v. Gilbey*, [1907] A. C. 139 (any son born in my lifetime). See 19 HARV. L. REV. 624.

¹⁴ *Trower v. Butts*, *supra*. In *Hall v. Hancock*, 32 Mass. 255, the child was born eight months and seventeen days after the testator's death.

¹⁵ *Smith v. McConnell*, 17 Ill. 135; *Pearson v. Carlton*, 18 S. C. 47.

¹⁶ *In re Wilmer's Trusts*, [1903] 2 Ch. 411. See 16 HARV. L. REV. 601.

¹ *Bass v. Feigenspan*, 96 Fed. 206.

² *Shaver v. Heller, etc., Co.*, 108 Fed. 821.

³ *Samuel v. Berger*, 24 Barb. (N. Y.) 163.

his goods a mark indicative of its origin which has never before been used, he is entitled to a property right in it.⁴ But where the name is descriptive he can acquire no title, since the property right is already in the general public.⁵ But given a case where the user has acquired a property right in the mark, is such right limited by any geographical boundaries? It is sometimes said that no such restriction exists.⁶ By the better view, however, this statement must be modified. It is well settled that a trade-mark can have no existence apart from the business with which it is connected and cannot be assigned apart from such business.⁷ It must, therefore, be restricted within the territorial scope of the business. Moreover, upon principle it would seem that, the property being a mere monopoly created by law, no extra-territorial effect can be given such law.⁸ Thus a right acquired by one person in Germany is of no avail as against a *bona fide* user of the same mark in America.⁹ There seems to be no direct authority as to the situs of this property right in a trade-mark or trade-name, but, since it is inseparable from the business, the situs must be the place where the business is carried on. It follows that when the business is conducted in two countries, there must be two distinct property rights existing independently in each country.

These conclusions are well illustrated by a recent federal decision. The plaintiffs had been engaged in France in the manufacture of a liqueur which they called "Chartreuse," and the product had been sold under that name for a number of years in this country. The French government confiscated the plaintiff's property, and the trade-name in question was transferred to the defendants. The plaintiffs removed to another country and continued to use the name. The defendants were enjoined from using the trade-name in the United States.¹⁰ *Baglin v. Cusenier Co.*, 156 Fed. 1016 (Circ. Ct., N. D. N. Y.). The court found that "Chartreuse" was a valid trade-mark, not a mere descriptive word. The plaintiffs were therefore possessed of two property rights, one situated in France and one in America, and as confiscation can only affect such property as can actually be seized,¹¹ the American property right remained in the plaintiffs. The decision may also be supported on the third ground upon which protection is granted, that the acts restrained amounted to a fraud on the public. Moreover, the business of the plaintiffs did not pass to the defendants, since the recipes for the manufacture were not disclosed. Therefore no property passed, and the confiscation merely amounted to a declaration that it was not unfair competition for the defendants to use the words. This, of course, was of no extra-territorial effect.

⁴ Browne, Trade-Marks, 2 ed., § 46.

⁵ See *Helmbold v. Helmbold, etc., Co.*, 53 How. Pr. (N. Y.) 453, 458.

⁶ *Derringer v. Plate*, 29 Cal. 292.

⁷ See *Congress, etc., Co. v. High Rock, etc., Co.*, 57 Barb. (N. Y.) 526, 551.

⁸ See *Vacuum Oil Co. v. Eagle Oil Co.*, 122 Fed. 105.

⁹ *Richter v. Reynolds*, 59 Fed. 577.

¹⁰ Similarly, the English Court of Appeal has recently granted an injunction against the use of the name in England. *Rey v. Lecoutrier*, 124 L. T. 195. As the case is not reported in full, the grounds upon which the English court reached this result are not entirely clear, but the decision seems to be based on the third principle—deception of the public.

¹¹ *The Ann*, 9 Cranch (U. S.) 289.